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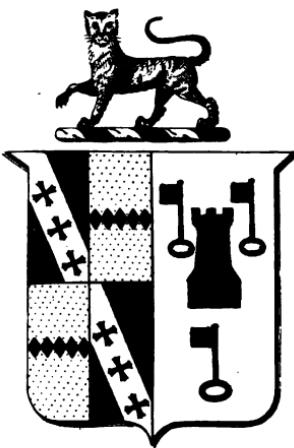
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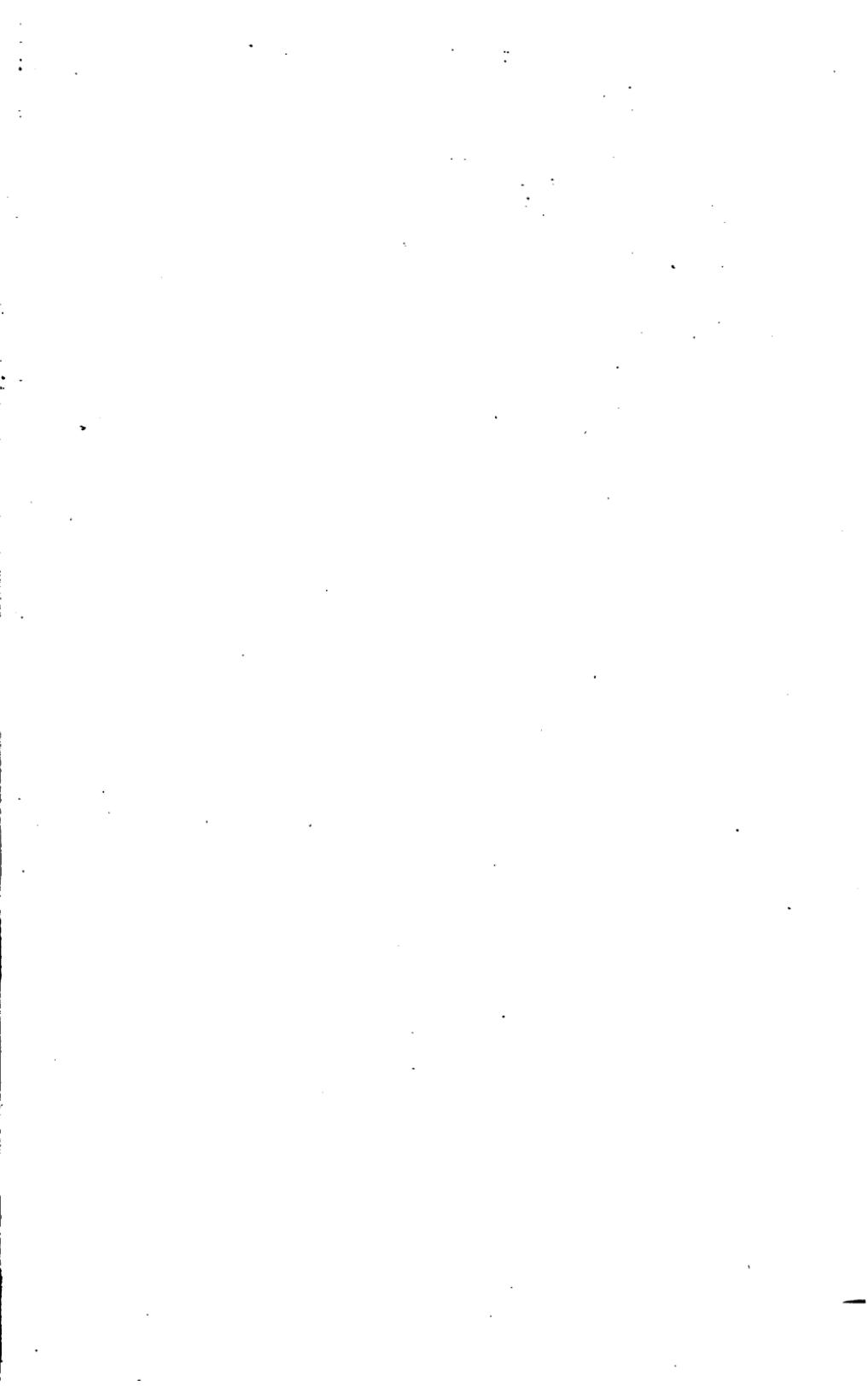
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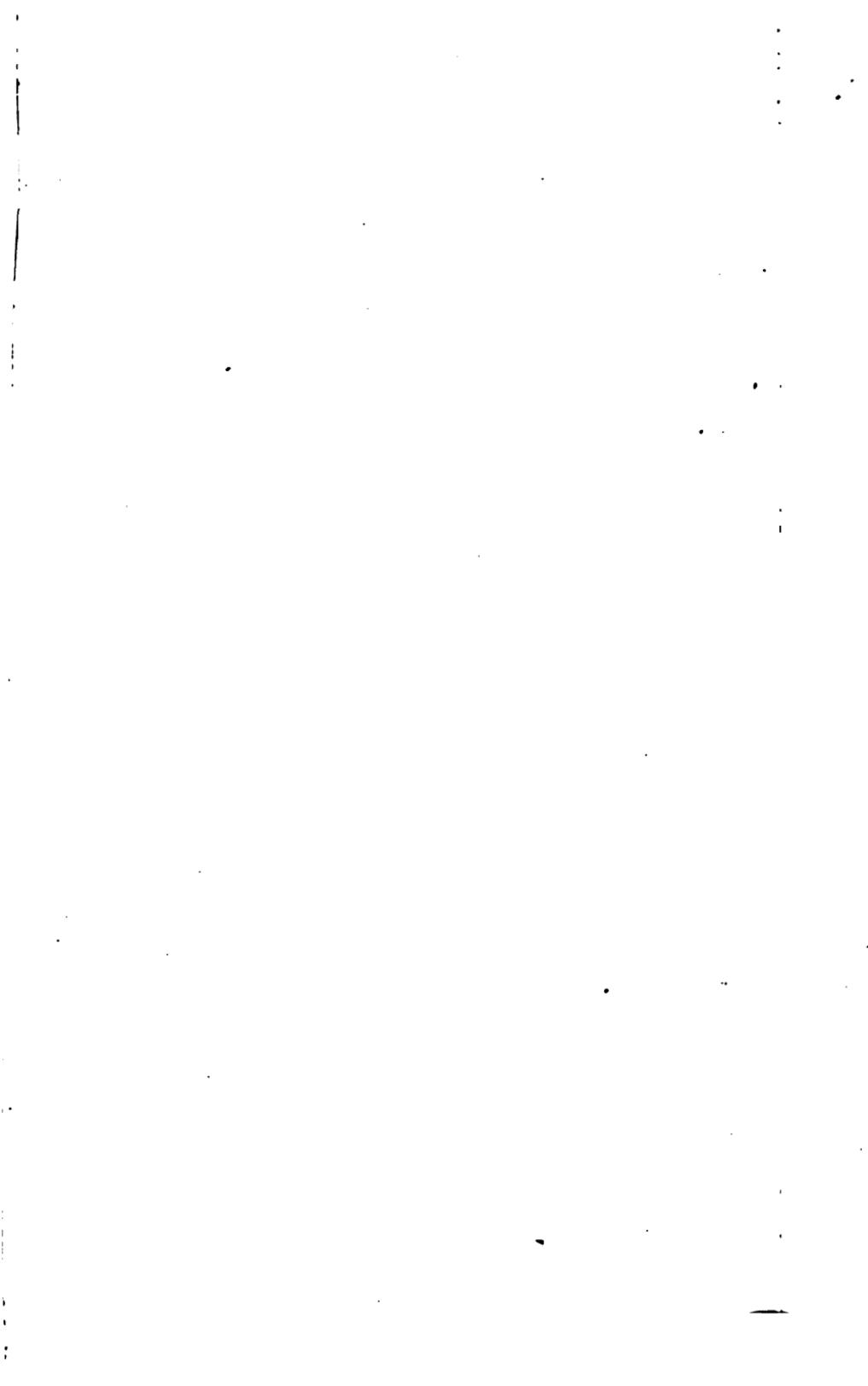


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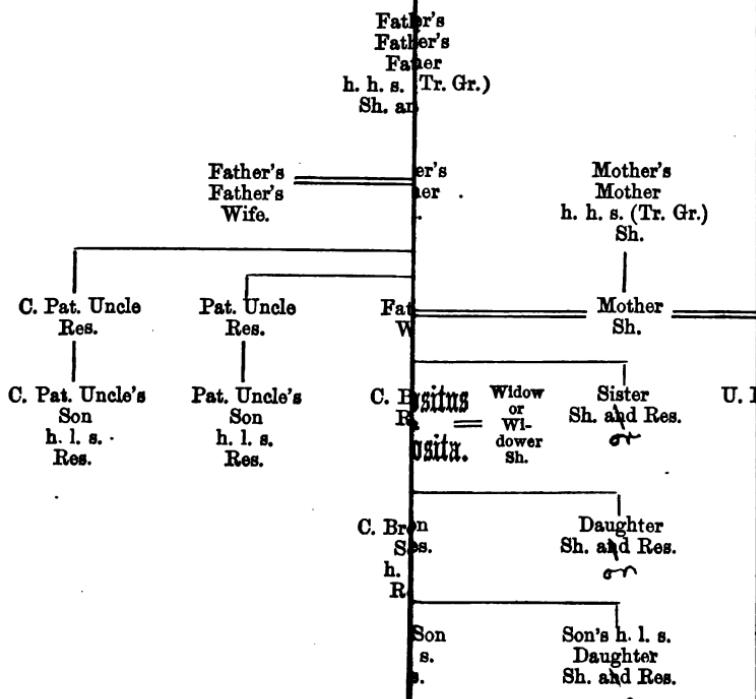






RITANCE,
ACCORDIUMMUDAN LAW

abbreviations, p. ix.



Distant heirs. (Sirajiyah, 28; 33.)
As to Gene Chart, see p. 11.

East Whinfield.

A CHART OR FAMILY INHERITANCE, ACCORDING TO ORTHODOX MOOHUMMUDAN LAW, WITH An Explanatory Treatise.

BY
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Sirajiyah reprinted," &c.*

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P R E F A C E.



THE progress of this work has been so satisfactory that the Publisher has only a few copies remaining, and I have been called upon to prepare a Second Edition. On the former occasion the "Chart" was ushered into the world without a preface: it has now done its work so well that it merits, I think, a few words of acknowledgment from its Author. The origin of the book was simple and practical. Having, some years ago, a Privy Council Case to conduct, of which the result, I foresaw, might possibly turn on a question of Moohummudan inheritance, I was anxious to ascertain the exact rights of one or two antagonistic claimants as derived from a deceased relative. To effect this seemed, at first, an impossibility, the English works which I consulted appearing so confused, and, even when intelligible, usually so imperfect or contradictory, that, in popular phraseology, I could "make neither head nor tail of them." In this dilemma I determined to attempt the construction of a Chart or Pedigree for my own use;

and while doing so (with the aid of the Sirajiyyah, of which I had luckily discovered a copy in the Library of Lincoln's Inn), I was struck with the idea that what had appeared indispensable to me might not prove unacceptable to others. In order to make the Chart generally intelligible it was necessary to supplement it with a few rules and definitions; and to these I afterwards added some chapters in which the working of the arithmetical problems was exhibited and explained. Thus it was that the first edition of this work came into existence, and I published it in the hope that it might be received as supplying a recognized want. That hope was fully realised. Several eminent professors in England, personally unknown to me, at once declared their intention of adopting it as a text-book in their classes; students and lawyers alike hailed it as setting forth in an intelligible form a subject which had been involved in Cimmerian darkness before; the subsequent sale in India plainly demonstrated that the opinions expressed in England on the first appearance of the book were not given rashly or without sufficient reason. I claim no merit in the matter except that of having pursued the somewhat unusual course of going to the original sources of information and resolutely working out the results for myself. There should be nothing wonderful in the appearance of a clear and correct statement of a

subject which ought to be well understood by all Anglo-Indian lawyers. The only wonder must ever be, that such a treatise as this had not appeared long before; and that circumstance affords a striking instance of the too prevalent indifference as to Indian affairs which is so much deplored by those who take a sincere interest in the welfare of Her Majesty's Eastern Empire.

In preparing the present edition, I have not thought it necessary to make any alteration in the general arrangement of the book. The "Chart," though somewhat different in appearance (the lines and spaces being more symmetrically arranged) is, in substance, the same as before. In revising the text and notes I have endeavoured to expunge all typographical errors, and, here and there, to make the explanations clearer and the references more complete. As regards the last mentioned point, there is an entirely new feature in the present edition. Each reference to the *Sirajiyyah* now consists of *two* numbers; the first indicating the page in the old edition of 1792, the second, that in the "*Sirajiyyah reprinted*,"* which has been published since the appearance of the first edition of this work. I have also added an Index, which, though perhaps not absolutely necessary in the case of so

* "Al *Sirajiyyah reprinted*; with Notes and Appendix by Almaric Rumsey." Amer, Lincoln's Inn Gate.

small a book, may yet be occasionally useful, and a few "Examples for Practice," which I have purposely refrained from working out, in order to give the younger portion of my readers an opportunity of learning to walk alone. With these alterations, I trust improvements, of detail, I again submit the "Chart of Moohummudan Inheritance" to the legal profession and the public, confident that it will meet with no less friendly a reception than that which greeted it on its first appearance in the year 1866.

A. R.

LONDON, 1871.

TABLE OF ABBREVIATIONS.

Sh.	-	-	Sharer.
Res.	-	-	Residuary.
D. K.	-	-	Distant Kindred.
h. h. s.*	-	-	how high soever.
h. l. s.*	-	-	how low soever.
Pat.	-	-	Paternal.
Mat.	-	-	Maternal.
C.	-	-	Consanguine.†
U.	-	-	Uterine.
Tr. Gr.	-	-	True Grandparents, Grandfather, or Grandmother.
F. Gr.	-	-	False ditto.
Macn. Princ.	-	-	“Principles and Precedents of Moohummudan Law,” by W. H. Macnaghten, Esq. (3rd edition, 1825).

* In using the terms “h. h. s.” and “h. l. s.” we always intend them to apply to the preceding, not to the following, word. Thus, in the table of sharers (*infra*, p. 8), “son’s h. l. s. child” means child of a *son h. l. s.*, not *child h. l. s.* of a son.

† We borrow this word from the French language, in which *consanguin* means “related through a common male ancestor.” Thus, by consanguine brother, we mean a half brother by the father; by consanguine paternal uncle, the father’s half brother by the father, &c.

Throughout this Treatise we purpose to use the words “uterine” and “consanguine” whenever relations of the half-blood are meant. The terms “sister,” “brother,” &c., when they occur alone, will be used to express relationship by the whole blood. But the reader will do well to remember, if he should make use of the Sir., that in that work the terms of relationship usually include both the whole and the half blood unless it is otherwise expressly stated.

S. D. A. - Macnaghten's Reports of Cases determined in the Court of Sudder Dewanny Adawlut.”*

Sir. - “Al Sirájiyyah, or the Mohammedan Law of Inheritance, with a Commentary,” translated by Sir William Jones: 1792. And “Al Sirájiyyah, or the Mahomedan Law of Inheritance, reprinted from the Translation of Sir William Jones; with Notes and Appendix by Almaric Rumsey.” 1869. N.B.—In the references to the Sir., the first number indicates the page in the Edition of 1792; the second, the page in the Edition of 1869.

L. C. D. - Least Common Denominator.

* A copy of these reports may be found in the library of Lincoln's Inn. A more ample collection of reports of the Supreme and Sudder Courts exists at the India Office.

CHAPTER I.

OBJECT AND SCOPE OF THE WORK.

IN countries subject to Moohummudan law, a testator, if he leaves any relations, can only dispose of one-third of his net property by will, and therefore, unless his debts, funeral expenses, &c., exhaust the estate, there is necessarily in almost all cases an intestacy as to a considerable portion.* Under these circumstances the law of inheritance assumes a far higher importance than it can ever have in our own country. It is not perhaps surprising that in communities where intestacy is thus the rule instead of the exception, the canons which regulate the division of property among the relatives of a deceased person should be of a somewhat refined and complicated character. As an instance, let us suppose that a man

* This is shewn by the following passage from the Sirájiyyah, an ancient treatise of high authority, translated into English by the celebrated Sir William Jones, and sold at Calcutta "for the benefit of insolvent debtors" in 1792.

"Our learned in the law (to whom God be merciful!) say:—There belong to the property of a person deceased four successive duties to be performed by the magistrate; first, his funeral ceremony and burial, without superfluity of expense, yet without deficiency; next, the discharge of his just debts from the whole of his remaining effects; then the payment of his legacies *out of a third of what remains after his debts are paid*; and, lastly, the distribution of the residue among his successors, according to the Divine Book, to the traditions, and to the assent of the learned."

Sir. 1 ; 1.

dies, leaving a father, a widow, a son, and a daughter. His property will be divided as follows:—father, $\frac{1}{6}$; widow, $\frac{1}{3}$; son, $\frac{2}{3}$ of what remains; daughter, $\frac{1}{3}$ of what remains. Such a case as this (a far simpler example than many which occur in practice) is sufficient to upset all our previous impressions, and to shew that if we would learn how to solve questions of Moohummudan inheritance, we must entirely divest ourselves of any preconceived ideas as to the devolution of property.

The Moohummudan rules of inheritance have been long laid down in books of authority, which agree in most points, though here and there they exhibit slight discrepancies. Several English writers have attempted with more or less success to digest this branch of Moohummudan law, and to place it in an intelligible form before the lawyers of our own country. In spite, however, of what has been effected up to the present time, the subject is much obscured by want of method, and still more by the retention of ancient modes of calculation, which have been, until recently, very insufficiently explained, and, perhaps, not thoroughly understood. Our object in preparing this work is to endeavour to place the matter more clearly before the reader; first, by exhibiting a chart or tree of the various relations who may succeed; secondly, by explaining the respective rights of these relations according to a systematic arrangement; and, thirdly, by shewing that the numerous problems which have hitherto been worked by the Oriental methods, will all readily yield to the power of European arithmetic.* Those who wish to

* The Moohummudan writers, and Macnaghten and other

see the somewhat lengthy but highly interesting Arabian system in actual operation, may gratify their curiosity by inspecting the author's work "Al Sirajiyyah reprinted; with Notes and Appendix," which has been published since the issue of the first edition of this treatise.

Having made these few remarks in order to render our design intelligible, we shall at once enter upon a task which, we trust, will not be altogether useless to those members of the bar who have to conduct Indian appeal cases before the Judicial Committee of the Privy Council. We shall give references to our authorities where it seems necessary in consequence of our differing from other English writers or inserting matter which we do not find in their works; but we do not propose to crowd the pages with references on every minute point. As the matter lies in a small compass, it will be sufficient to say that the Sirajiyyah is our main authority throughout, and that, in

English writers in their train, begin by dividing numbers into four different kinds, viz., *mootumasil*, or equal; *mootudakhil*, or one measuring the other; *mootuwafiq*, or having some third number as a common measure; and *mootubayun*, or having no common measure. They then proceed to lay down no less than seven "principles" or empirical rules for working particular classes of cases. That this is entirely unnecessary must be obvious to every mathematician. It is not surprising that early translators should have feared to amend this curiously complicated machinery, and should have been contented to copy it exactly, just as the Japanese are said to copy a watch or a steam engine, without understanding it. But it is somewhat singular that writers of the present generation have also adhered to the old method, without, apparently, being conscious of the inconvenience involved in its use, or the facility with which a remedy may be applied.

the absence of any reference in the notes, the reader may assume that we rely on that work.

In concluding our prefatory remarks, it may be as well to state, first, that in this short treatise we do not propose to include the Shia doctrine of inheritance, which pertains only to the sect of Ali (more important in Persia than in India), and secondly, that we purpose to deal only with family rights, and not with those connected with manumission, affiliation, or any other exceptional cause of succession.

CHAPTER II.

RULES, DEFINITIONS AND EXPLANATIONS.

THERE is no distinction between real and personal property. There is no right of primogeniture, so that, for instance, if a man leave three sons, the eldest will take no more than each of the other two.

There is no right by representation. Thus, if a man leaves as his only relations one son and a grandson through another son, the surviving son will take all, and the grandson will have no claim as the representative of his deceased parent.

There is no distinction between ancestral property and property which the deceased has himself acquired.

Persons who may succeed to property by virtue of relationship or marriage to the deceased are divided into three classes, viz. :—Sharers, Residuaries, and Dis-

tant Kindred. The first two classes are frequently mentioned under the common name of "heirs." Sharers are those who are entitled to a prescribed fractional part; *e.g.* a wife, under certain circumstances, takes $\frac{1}{2}$; a father $\frac{1}{6}$; a daughter $\frac{1}{3}$, &c. Residuaries are those who take no prescribed fractional part, but divide the residue among them after the sharers are satisfied, and the whole if there are no sharers.* Distant Kindred are all relations who are neither sharers nor residuaries.† When there are no sharers or residuaries the distant kindred take the whole among them according to certain rules.

The reader may now, on referring to the chart, ascertain what relations come under these several heads.

In order, however, to make the chart perfectly intelligible, it is desirable to add a few words of explanation. Those persons who are designated "Sh. and Res." are persons who, though primarily sharers, may, under certain circumstances, be residuaries.‡

Those who have no designation attached (as "mother's husband") are not either Sh. or Res., and are only inserted as part of the machinery of the pedigree, in order to bring in the C. and U. relations.

The distant kindred are not inserted in the pedi-

* Sir. 2; 2.

† Sir. 28; 33. This important definition has been overlooked by some English writers. The absence of such a definition naturally tends to create an erroneous impression that the right of inheriting is limited within certain degrees or classes of relations, instead of extending, as it really does, to the whole kindred of the deceased. See further remarks on this subject, *infra*, p. 19.

‡ See *infra*, Chap. 4.

gree, as their definition is purely negative, viz., those relations who are neither sharers nor residuaries.*

The ancestors of the deceased are divided into true and false grandfathers and grandmothers, and only the true are inserted in the chart, as the false are distant kindred. The true grandfathers, or "true male ancestors," as they are also designated, are those between whom and the deceased no female intervenes.† They can therefore only be found in one line, namely that described as father's father h. h. s. True grandmothers, or "true female ancestors," on the other hand, are those between whom and the deceased no F. grandfather intervenes;‡ and it is clear that they may exist in several lines. Thus, we have in the chart the mother's mother h. h. s. ; the mother h. h. s. of the father's father h. h. s. &c.

The following are instances of false grandparents; father's mother's father, mother's father's father (because a female intervenes), and mother's father's mother (because a false grandfather intervenes).

We append a scheme of grandparents, in order to illustrate the above remarks. The true are printed in Old English, and the false in ordinary type. The male ancestors are designated M., and the female F. It will be observed that in this ascending pedigree the female sex has a decided advantage, inasmuch as, in a total of 60 grandparents, there are 26 false males and only 16 false females.

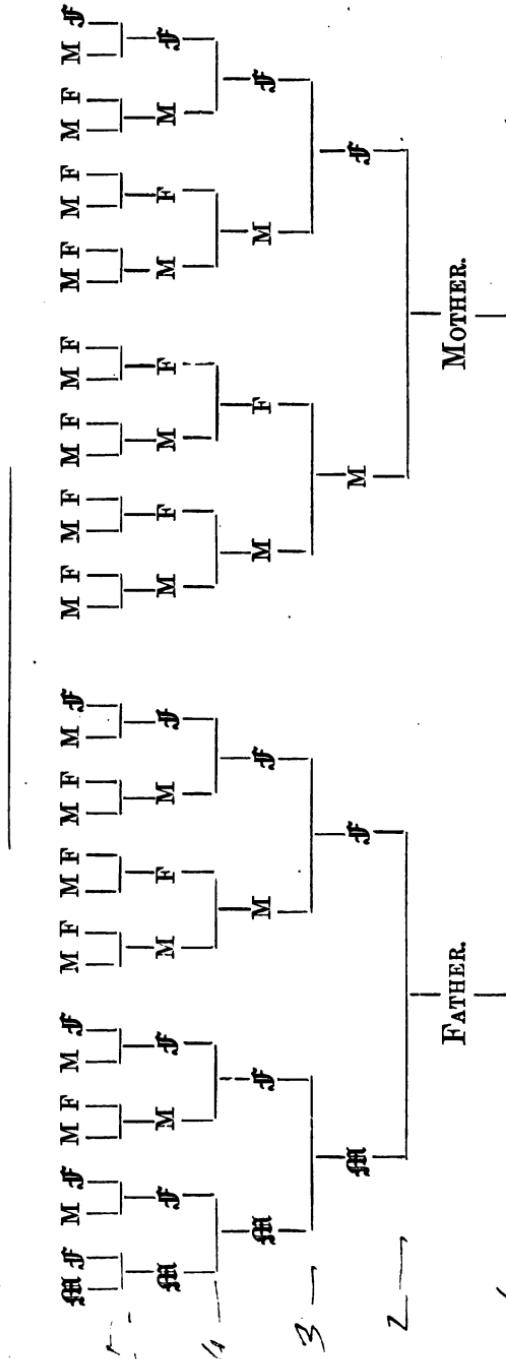
* *Supra*, p. 5.

† Sir. 3 ; 4.

‡ Sir. 3 ; 4.—This simple and intelligible definition is overlooked by several writers, who have succeeded in making the subject of grandparents appear to be one of hopeless complication.

SCHEME OF GRANDPARENTS,

SHewing THE TRUE AND THE FALSE UP TO FIVE GENERATIONS.



In order to simplify the chart, we have omitted all avuncular* relations except the immediate uncles of the deceased, but in the absence of nearer relations the full and C. great uncles and great great uncles also come in.†

CHAPTER III.

OF SHARERS AND THEIR RESPECTIVE SHARES.

FROM the chart, it will be seen that there are four male and eight female sharers. Their respective shares are shewn in the following table.‡

Husband	· · · ·	$\frac{1}{4}$ when there is a child or son's h. l. s. child.
"	· · · ·	$\frac{1}{2}$ when not.
Father	· · · ·	$\frac{1}{6}$
Tr. Grandfather	· · · ·	$\frac{1}{6}$ when not excluded.
U. Brother or Sister §	· · · ·	$\frac{1}{6}$ when only one , and no child, son's h. l. s. child, father, or Tr. grand- father.

* We use "avuncular" as a convenient word to indicate uncles and aunts, great uncles and great aunts, &c., on either side and at any degree of distance, though the etymological sense of the word is of course more limited.

† Sir. 11 ; 14.

‡ This table is founded on the chapters on sharers in the Sirajiyah, p. 3 ; 4 ; &c.

§ We have placed U. brother and sister together, because they stand on precisely the same footing; thus affording an exception to the rule of a double share to the male, which occurs so frequently that it may be considered a general rule.—Sir. 4 ; 6.

U. brother or sister	-	$\frac{1}{3}$ when two or more, and no child, &c.
Wife	-	$\frac{1}{3}$ when child or son's h. l. s. child.
"	-	$\frac{1}{4}$ when not.
Daughter	-	$\frac{1}{2}$ when only one and no son.
"	-	$\frac{2}{3}$ when two or more and no son.
Son's Daughter*	-	$\frac{1}{2}$ when only one and no child or son's son.
" "	-	$\frac{2}{3}$ when two or more, and no child or son's son.
" "	-	$\frac{1}{6}$ † when one daughter and no son or son's son.
Mother	-	$\frac{1}{6}$ when child or son's h. l. s. child; or two or more brothers and sisters, or C. or U. brothers or sisters.
"	-	$\frac{1}{3}$ when not.
" (but)	-	$\frac{1}{3}$ of remainder only after deducting wife's or husband's share, when a wife or husband and a <u>father</u> , (<i>secus</i> if a grandfather instead of a father.)

* "Or other female descendant, h. l. s." Sir. 3; 4. But this evidently means son's h. l. s. daughter, since a daughter's child is in the 1st class of D. K., Sir. 29; 34.

† The theory is this; the daughter takes $\frac{1}{2}$ and leaves $\frac{1}{2}$ for the son's daughters; but if there be two or more daughters, they take their $\frac{1}{2}$, and there is nothing left for the son's daughters.

∴ 1/2 share
each

10 OF SHARERS AND THEIR RESPECTIVE SHARES.

Tr. Grandmother h. h. s.	$\frac{1}{6}$	when not excluded.
Sister	$\frac{1}{2}$	when only one, and no son, son's son h. l. s., father, (perhaps Tr. grandfather), daughter, son's daughter or brother.
"	$\frac{2}{3}$	when two or more, and no son, &c.
C. Sister	$\frac{1}{2}$	when only one, and no son, &c., or sister.
"	$\frac{2}{3}$	when two or more, and no son, &c., or sister.
"	$\frac{1}{6}$	when <u>one</u> sister, but no son, &c.
U. Sister		(<i>Vide supra</i> , U. brother or sister.)

Several of the above mentioned classes of sharers may, under some circumstances, become residuaries also, or residuaries only. We shall recur to this subject in Chapter 4.

In making use of the above table of shares, it must be borne in mind that two or more of a particular class (except where otherwise specified) only take in the aggregate the same share that one of that class, if alone, would take; *e.g.* one wife taking $\frac{1}{8}$, two wives will take $\frac{1}{4}$ between them; and, the share of a true grandmother being $\frac{1}{6}$, three Tr. grandmothers will divide $\frac{1}{2}$ between them. With regard to Tr. grandmothers, however, the following disputed point occasionally arises. If one of two Tr. grandmothers be related by two lines (as if she be the father's

father's mother and also the mother's mother's mother), it is said by some writers that she will then take $\frac{2}{3}$, and the other only $\frac{1}{3}$, of the share.

It will be gathered from the above table that the shares are subject to a variety of alternatives and exceptions. The alternatives appear sufficiently in the table itself; the exceptions will be treated of *infra* in Chapters 4 and 9, on "Residuaries" and "Exclusion."

CHAPTER IV.

OF RESIDUARIES.

It will be seen from the chart that the residuaries who cannot be sharers are,—the son; son's son, h. l. s.; brother; C. brother; brother's son, h. l. s.; C. brother's son, h. l. s.; Pat. uncle; C. Pat. uncle; Pat. uncle's son, h. l. s.; C. Pat. uncle's son, h. l. s.; and we may add the Pat. and C. Pat. uncles of the father and grandfather, and their sons, h. l. s. The great uncles and great great uncles are not inserted in the chart, having been omitted for the sake of simplicity. It is necessary here to mention that even more remote avuncular relations, (as, brothers of great grandfathers, great great grandfathers, &c.), and their sons h. l. s., would appear to come in as residuaries, and so to inherit before the D. K., for a residuary is "Every

male in whose line of relation to the deceased no female enters.* No female relative is primarily a residuary.

Several of the persons enumerated in Chapter 3 as sharers may under some circumstances become either residuaries only instead of sharers, or residuaries as well as sharers. These are designated in the chart as "Sh. and Res." The following are the circumstances under which they respectively become residuaries:—

Father.—When there are daughters, or daughters of a son, h. l. s.,† and no sons, he takes in addition to his share, $\frac{1}{6}$, the residue after their shares are satisfied. In default of children or son's children or other low descendants,‡ he has a "simple residuary title." It will perhaps be more convenient to abandon the ancient phraseology, and to say that where there are sons h. l. s. the father only takes his share, $\frac{1}{6}$, and that when there are none he is a residuary also. The rule thus stated will include all the cases. Thus, if a father and two daughters are the only claimants, the father first takes $\frac{1}{6}$, then the daughters

* Sir. 10; 12.

† e.g. Daughters of a son's son, not daughters of a son's daughter, as those would be among the D. K.—(*infra*, Chap. 5.)

‡ Sir. 4; 5.—That is, other low descendants who are sharers or residuaries. In other words, as he excludes all ancestors except the mother and Tr. maternal grandmother (*infra* Chap. 9.), and as there are in the supposed case no descendants who are sharers or residuaries, he takes the residue after payment of the shares of wife, husband, and mother or Mat. grandmother. We must take the expression "low descendants" in the above limited sense, for we know that D. K. cannot come in when there is a father living. (See definition of D. K., *supra*, p. 5.)

take $\frac{2}{3}$ or $\frac{4}{6}$, and the father has the remaining $\frac{1}{6}$. And if there be a father and mother, and no children, or son's h. l. s. children, the father first takes $\frac{1}{6}$, the mother $\frac{1}{3}$ or $\frac{2}{6}$, and then the father has the remaining $\frac{2}{6}$ or $\frac{1}{3}$.

True grandfather.—Takes the father's portion both as residuary and as sharer when there is no father.*

Daughter.—When there are sons as well as daughters, the daughters are residuaries instead of sharers, and each daughter takes half as much as each son. Thus, if there be two daughters and two sons, instead of the daughters taking $\frac{2}{3}$ between them, each daughter will take $\frac{1}{6}$ of the residue, and each son $\frac{2}{6}$ or $\frac{1}{3}$.

Son's daughter.†—If there be two daughters,‡ they take their $\frac{2}{3}$, and there is no share left for the son's daughters; but if there be in an equal or lower degree with them a boy,§ the son's daughters become residuaries. Each female then takes half as much as each male. Thus, if there are two daughters, one son's daughter, and one son's son, the two daughters take $\frac{2}{3}$, and there is no share left for the son's daughter, but she will take $\frac{1}{6}$ of the residue, and the son's

* Sir. 4; 6.—And it must be assumed, no intermediate Tr. grandfather.—See Doctrine of Exclusion, Chap. 9.

† From an illustration at Sir. 5; 8, it is clear that "son's daughter" means daughter of son h. l. s.

‡ We know that "two or more" daughters take two thirds (*supra*, p. 9; Sir. 5; 8), and it is probable that the words here ought to be *two or more*, but we feel bound to follow the text, leaving the reader to satisfy himself further by a perusal of the original authority.

§ Sir. 5; 8.—We copy the exact words, which are rather singular, but will be understood from the illustration which follows.

son will take $\frac{2}{3}$ thereof, whereas, if there were no son's son, the son's daughter would have nothing, being excluded by the daughters (*inf. Chap. 9*); and the daughters would take the residue by the "return" (*inf. Chap. 7*). There is a curious point about descendants of this kind; that if there be a son's daughter and a son's son's daughter, but no daughter, the two survivors stand with respect to each other in precisely the same position as a daughter and a son's daughter, that is, the son's daughter takes a half, and the son's son's daughter $\frac{1}{6}$. The same rule applies apparently to any lower stage of descent.*

Sister.—When there are brothers† the sisters become residuaries, and each sister takes half as much as each brother. When there are daughters or son's daughters and no brothers, the sisters take the residue after payment of the daughters or son's daughter's shares. *Being made R. with this*

Consanguine sister.—When there are two or more sisters there is no share left for C. sisters; but if there be also C. brothers‡ (*i. e.* brothers of the C. sisters) the C. sisters become residuaries, each C. sister taking half as much as each C. brother. They also, like sisters, become residuaries if there be daughters or son's daughters.

We may add that a wife or husband, though not technically called a residuary, would appear to be

* Sir. 5, 6; 8, 9.—The illustration called the "case of Tashbib" shows how the principle is made to extend to sons' daughters, the offspring of various sons or sons' sons, at different stages of descent.

† Sir. 7; 7.

‡ Sir. 7; 7.

entitled to the residue in addition to his or her prescribed share, when the deceased has left no other heir. (*Mussumat Soobhanee v. Bhetun*, 1 S. D. A. 346.)*

The residue (except where otherwise specified) is divided equally among residuaries in the same degree. Thus, if the residuaries are three brothers' sons, each will take $\frac{1}{3}$ of the residue, whether they are all sons of the same brother, or two of them sons of one brother and one of another. Where a conflict occurs between the whole and the half blood, the whole blood prevails.†

CHAPTER V.

OF DISTANT KINDRED.

It has already been stated that the "distant kindred" divide the property among them when there are no sharers or residuaries.‡ The mere absence of residua-

* But this principle, although worth recording for further enquiry, remains in some doubt; partly because it rests only on a single decision of the late Calcutta Sudder, and partly because there is nothing in the report of that decision to show very decidedly whether the word "heir" was confined, as in the Sirajiyah, to the Sh. and Res., or was intended to comprehend the D. K. also.

† This chapter is founded principally on the chapters on sharers and residuaries in the Sirajiyah, pp. 3-12; 4-15.

‡ For definition of D. K., see p. 5.

ries would not be sufficient to cause the admission of D. K., for, although the sharers might not exhaust the property, the residue would be divided among the sharers (exclusive of the husband and wife, if any) by the doctrine of the "return."* In such case, therefore, there would be nothing left for the D. K. When, however, the D. K. succeed, in consequence of the absence of sharers and residuaries, they are admitted, as a general rule, according to the order of their classes (*infra*).† Thus, if there be any D. K. of the first class, those of the second class have no claim, and so on with the rest. This rule is so rigidly followed, that a person of the third class, for instance, can have no portion of the inheritance, even though he be nearer to the deceased in the actual number of steps than those of the first and second class who may be living.‡

The D. K. are primarily divided into four classes, which are as follows:—

1. Persons descended from the deceased h. l. s.; *i.e.* daughters' children and children of son's daughters.
2. Those from whom the deceased is descended, h. h. s.; *i.e.* false grandparents.
3. Those descended from the parents of the deceased, h. l. s.; *i.e.* sisters', and C. and U. sisters',

* *Infra*, Chap. 7.

† An exception occurs, according to some writers, in the case of the maternal grandfather, who comes after the third class, although belonging nominally to a higher class.—Sir. 30; 35.

‡ According to some writers, however, the second class are in the highest position.—Sir. 29; 35.

children; brothers', and C. and U. brothers', daughters; and U. brothers' sons.

4. Those descended from the two grandfathers and two grandmothers of the deceased;* *i.e.* Pat. aunts, U. Pat. uncles, Mat. uncles and aunts, and C. and U. Pat. aunts and Mat. uncles and aunts.

It must be remembered, however, that not only these, but all who are related to the deceased through them, are among the D. K.†

Within the limits of each particular class (except the fourth or avuncular class, for which there are special rules) it is laid down that the nearer in degree to the deceased succeeds in preference to one more remote,‡ and if there be several of an equal degree who are entitled to succeed, the property goes equally among them if they are of the same sex.§ If they are of different sexes, *prima facie* each male takes a double portion.|| There is, however, some disagreement as to cases where persons through whom they are related to the deceased are of different sexes, and it is maintained by the most approved authorities that in the first, second and third classes regard must be had to the sexes of the intermediate relations and not to those of the actual claimants.

* The expression, *two* grandfathers and *two* grandmothers, is peculiar, and is not met with elsewhere in the Sir. The fourth class includes, as the reader will readily perceive, such children of the immediate grandparents as are not enumerated among the heirs.

† Sir. 29; 35.

‡ Sir. 30; 35, &c.

§ *Ibid.*

|| Sir. 31; 37.

Thus, it is clear that if a man leave a daughter's son and a daughter's daughter, the male will have a double share, for there is no difference of sex in the intermediate ancestors; but if there be a daughter of a daughter's son and a son of a daughter's daughter, it is said, according to the most approved writers, that the female instead of the male will get the double portion, by reason of her father's sex.* This is denied indeed by Abu Yusuf, who maintains that in the first and third classes the sex of the actual claimants should always decide the question; but his doctrine does not seem to be generally accepted.†

In cases where the degrees are equal, in classes 1, 2, a person descended from an heir, and in class 3 a person descended from a residuary, is preferred to one not so descended.

The following special rules are laid down as to particular classes.

In the second class, $\frac{2}{3}$ go to the paternal side, and $\frac{1}{3}$ to the maternal, if there are sets of claimants on both sides.‡

In the fourth class, the whole blood is preferred to the half, and those who are connected by a father only are preferred to those who are connected by a mother only, whether they be males or females.§ To the rule as to the whole blood there is, however, this exception, that it does not apply when the claimants

* Sir. 31; 37, &c.

† See further illustrations of this difference, Sir. 32; 38, and see discussion on this point, as to class 3, Sir. 37; 43.

‡ Sir. 35; 41.

§ Sir. 39; 45.

are on different sides. Thus, a U. paternal aunt, will not be prevented from succeeding by a maternal aunt of the whole blood, but she will in fact take a double share, because of her relationship through the father.* *Cæteris paribus*, a male takes a double share.

After the fourth class come in the cousins, or descendants of the fourth class, whose succession is regulated by somewhat similar rules; but for these rules, and for some few points as to the classes in addition to those mentioned above, we must refer the reader to the *Sirajiyyah*.

It is important, before quitting this subject, to caution the reader against being led astray by laying too much stress on the division into classes, and imagining that these classes are intended to exhaust, by a logical division, the whole category of the D. K. In order to obviate this danger, we have only to recall attention to the definition of D. K. as "All relations who are neither sharers nor residuaries" (*supra*, p. 5.)

CHAPTER VI.

OF DIVISION OF THE PROPERTY AMONG SHARERS AND RESIDUARIES.

WHEN the property of a deceased person is to be divided among several heirs, the modern European

* Sir. 40; 45.

rules of arithmetic afford easy means of ascertaining the amount due to each claimant. Moohummudan writers have thrown an apparent obscurity over this subject by framing a number of minute and artificial rules applicable to particular classes of cases, but the cloud is easily dispelled. , 66 - 172

Mr. Macnaghten (Macn. Princ. pp. 14—20) works out a number of examples according to the ancient and cumbrous methods, but we shall now work out the same examples by European arithmetic, in order to shew that it gives us precisely the same results, except where Macnaghten is clearly proved to be in error.* In order to make the coincidence more clearly apparent, we shall in each case reduce the resulting fractions to the least common denominator, as Mr. Macnaghten, following the Moohummudan Jurists, usually presents them in that form.

EXAMPLE 1.—Father, mother, and two daughters.
Here the shares are:—

Father	—	—	—	$\frac{1}{6}$
Mother	—	—	—	$\frac{1}{6}$
Two daughters	—	—	—	$\frac{2}{3}$

Hence each daughter's share $= \frac{2}{3} \div 2 = \frac{1}{3}$

Reducing the fractions $\frac{1}{6}$, $\frac{1}{6}$, $\frac{1}{3}$, to a common denominator, we have: $\frac{1}{6}$, $\frac{1}{6}$, $\frac{2}{6}$.

Hence the father has	—	—	—	$\frac{1}{6}$
” mother	—	—	—	$\frac{1}{6}$
” each daughter	—	—	—	$\frac{2}{6}$

The property is therefore exactly divided, and

* See notes, *infra*, pp. 24, 27.

there is nothing left for the father to take in his residuary capacity.

EXAMPLE 2.—Father, mother, and ten daughters,
Here we have :—

Father	-	-	-	-	-	$\frac{1}{6}$
Mother	-	-	-	-	-	$\frac{1}{6}$
Ten daughters	-	-	-	-	-	$\frac{2}{3}$

or each daughter $\frac{2}{3} \div 10 = \frac{1}{15}$

Reducing the fractions $\frac{1}{6}$, $\frac{1}{6}$, $\frac{1}{15}$ to the least common denominator, we have: $\frac{5}{30}$, $\frac{5}{30}$, $\frac{2}{30}$

Hence the father has	-	-	-	-	-	$\frac{5}{30}$
" mother	-	-	-	-	-	$\frac{5}{30}$
" each daughter	-	-	-	-	-	$\frac{2}{30}$

Here, as in the last case, the property is exhausted.

EXAMPLE 3.—Father, mother, and five daughters :—

Father	-	-	-	-	-	$\frac{1}{6}$
Mother	-	-	-	-	-	$\frac{1}{6}$
Each daughter	-	-	-	-	-	$\frac{2}{3} \div 5 = \frac{2}{15}$

Reducing $\frac{1}{6}$, $\frac{1}{6}$, $\frac{2}{15}$, to the least common denominator, we have :—

Father	-	-	-	-	-	$\frac{5}{30}$
Mother	-	-	-	-	-	$\frac{5}{30}$
Each daughter	-	-	-	-	-	$\frac{4}{30}$

Here also the property is exhausted.

EXAMPLE 4.—Six daughters, three Tr. grandmothers, and three paternal uncles.

Here the three paternal uncles are residuaries ; the shares are :—

6 daughters $\frac{2}{3}$, \therefore each daughter $\frac{2}{3} \div 6 = \frac{1}{9}$

3 grandmothers $\frac{1}{6}$, \therefore each grandmother $\frac{1}{6} \div 3 = \frac{1}{18}$

Here it is clear the property is not exhausted by the sharers. To find the fractional part remaining for the residuaries after payment of the shares, we must subtract the shares from unity, or the whole; hence we have :—

Residue $1 - \frac{2}{3} - \frac{1}{6} = 1 - \frac{5}{6} = \frac{1}{6}$

Each paternal uncle $\frac{1}{6} \div 3 = \frac{1}{18}$

Reducing the fractions $\frac{1}{6}$, $\frac{1}{18}$, $\frac{1}{18}$, to the least common denominator, we have :—

Each daughter - - - - $\frac{2}{18}$

Each grandmother - - - - $\frac{1}{18}$

Each Pat. uncle - - - - $\frac{1}{18}$

EXAMPLE 5.—Four wives, three Tr. grandmothers, and twelve paternal uncles.

The paternal uncles are residuaries. The shares are :—

Four wives $\frac{1}{4}$, \therefore each $\frac{1}{4} \div 4 = \frac{1}{16}$

Three grandmothers $\frac{1}{6}$, \therefore each $\frac{1}{6} \div 3 = \frac{1}{18}$

The part remaining for the residuaries is found as in the previous example, and we have :—

Residue $1 - \frac{1}{4} - \frac{1}{6} = 1 - \frac{5}{12} = \frac{7}{12}$

Each Pat. uncle $\frac{7}{12} \div 12 = \frac{7}{144}$

Reducing the fractions $\frac{1}{16}$, $\frac{1}{18}$, $\frac{7}{144}$, to the least common denominator, we have :—

Each wife - - - - $\frac{9}{144}$

Each grandmother - - - - $\frac{8}{144}$

Each paternal uncle - - - - $\frac{7}{144}$

EXAMPLE 6.—Four wives, eighteen daughters, fifteen Tr. female ancestors, and six paternal uncles. Here we have :—

4 Wives $\frac{1}{8}$, \therefore each wife $\frac{1}{8} \div 4 = \frac{1}{32}$

18 Daughters $\frac{2}{3}$, \therefore each daughter $\frac{2}{3} \div 18 = \frac{1}{27}$

15 Female ancestors $\frac{1}{6}$, \therefore each female ancestor $\frac{1}{6} \div 15 = \frac{1}{90}$

The portion remaining for the residuaries is:—

$$1 - \frac{1}{8} - \frac{2}{3} - \frac{1}{6} = 1 - \frac{23}{24} = \frac{1}{24}$$

$$\text{Each paternal uncle } \frac{1}{24} \div 6 = \frac{1}{144}$$

Reducing the fractions $\frac{1}{32}$, $\frac{1}{27}$, $\frac{1}{90}$, $\frac{1}{144}$, to the least common denominator, we get:—

$$\text{Each wife} \quad \cdot \quad \cdot \quad \cdot \quad \frac{135}{4320}$$

$$\text{Each daughter} \quad \cdot \quad \cdot \quad \cdot \quad \frac{160}{4320}$$

$$\text{Each female ancestor} \quad \cdot \quad \cdot \quad \cdot \quad \frac{48}{4320}$$

$$\text{Each paternal uncle} \quad \cdot \quad \cdot \quad \cdot \quad \frac{30}{4320}$$

EXAMPLE 7.—Two wives, six Tr. female ancestors, ten daughters, and seven paternal uncles. Here we have:—

Two wives $\frac{1}{8}$, \therefore each wife $\frac{1}{8} \div 2 = \frac{1}{16}$

Six female ancestors $\frac{1}{6}$, \therefore each female ancestor $\frac{1}{6} \div 6 = \frac{1}{36}$

Ten daughters $\frac{2}{3}$, \therefore each daughter $\frac{2}{3} \div 10 = \frac{1}{15}$

Consequently there remains for the residuaries:—

$$1 - \frac{1}{8} - \frac{1}{6} - \frac{2}{3} = 1 - \frac{23}{24} = \frac{1}{24}$$

$$\text{Each paternal uncle } \frac{1}{24} \div 7 = \frac{1}{168}$$

Reducing the fractions $\frac{1}{16}$, $\frac{1}{36}$, $\frac{1}{15}$, $\frac{1}{168}$ to the least common denominator, we get:—

$$\text{Each wife} \quad \cdot \quad \cdot \quad \cdot \quad \frac{315}{5040}$$

$$\text{Each female ancestor} \quad \cdot \quad \cdot \quad \cdot \quad \frac{140}{5040}$$

$$\text{Each daughter} \quad \cdot \quad \cdot \quad \cdot \quad \frac{336}{5040}$$

$$\text{Each paternal uncle} \quad \cdot \quad \cdot \quad \cdot \quad \frac{30}{5040}$$

EXAMPLE 8.—One wife, eight daughters, and four paternal uncles. Here we have:—

One wife $\frac{1}{8}$

Eight daughters $\frac{8}{3}$, \therefore each daughter $\frac{8}{3} \div 8 = \frac{1}{3}$

To find the portion of the residuaries:—

$$1 - \frac{1}{8} - \frac{8}{3} = 1 - \frac{12}{24} - \frac{64}{24} = \frac{5}{24}$$

$$\text{Each paternal uncle } \frac{5}{24} \div 4 = \frac{5}{96}$$

Reducing the fractions $\frac{1}{8}$, $\frac{1}{3}$, $\frac{5}{96}$ to the least common denominator, we have:—

$$\text{The wife} \quad \cdot \quad \cdot \quad \cdot \quad \cdot \quad \frac{12}{96}$$

$$\text{Each daughter} \quad \cdot \quad \cdot \quad \cdot \quad \cdot \quad \frac{32}{96}$$

$$\text{Each paternal uncle*} \quad \cdot \quad \cdot \quad \cdot \quad \cdot \quad \frac{5}{96}$$

When the fractions have been ascertained in the manner shewn in the above examples, it only remains, of course, to divide the property into the number of parts indicated by the L. C. D., and to give to each sharer or residuary as many of those parts as are indicated by the numerator of his particular fraction. Thus, in the last example, the whole will be divided into 96 parts, of which 12 will be given to the wife, 8 to each daughter, and 5 to each paternal uncle.

* In this example there is an arithmetical error in Macn. Princ. 21. It is there stated that the share of each paternal uncle is $\frac{4}{96}$. But it is of course plain that this would not exhaust the property, since:—

$$\frac{12}{96} + \frac{8 \times 8}{96} + \frac{4 \times 4}{96} = \frac{12 + 64 + 16}{96} = \frac{92}{96}$$

while on the other hand it will easily be seen that the division above given exhausts the whole, or, in Mr. Macnaghten's words, "makes up the required number 96;" for

$$\begin{aligned} \frac{12}{96} + \frac{8 \times 8}{96} + \frac{5 \times 4}{96} &= \frac{12 + 64 + 20}{96} \\ &= \frac{96}{96} \\ &= 1 \end{aligned}$$

CHAPTER VII.

OF THE INCREASE AND RETURN.

It is obvious that, in a system involving the division of unity into a number of arbitrary fractional parts, it may happen that the fractions when added together are sometimes greater, and sometimes less, than the whole. The former contingency of course occasions a difficulty whenever it occurs, the latter only when there are no residuaries. The doctrine of the "Increase" provides for the former class of cases; and that of the "Return" for the latter.

The Increase is the division of the property into a larger number of parts than that indicated by the least common denominator of the fractional shares. The rule is, to increase the L. C. D. so as to make it equal to the sum of the numerators; in other words, to the aggregate number of parts required.

EXAMPLE.—Husband, father and mother and daughter —

Husband	.	.	.	.	$\frac{1}{4}$
Father	.	.	.	.	$\frac{1}{6}$
Mother	.	.	.	.	$\frac{1}{6}$
Daughter	.	.	.	.	$\frac{1}{2}$

Reducing these to the L. C. D. we have,—

$$\frac{3}{12}, \frac{2}{12}, \frac{2}{12}, \frac{6}{12};$$

that is, in all, $\frac{13}{12}$, which would be more than the

whole. Increasing the number of parts (that is, the L. C. D.) to 13, we have:—

Husband	-	-	-	$\frac{3}{13}$
Father	-	-	-	$\frac{2}{13}$
Mother	-	-	-	$\frac{2}{13}$
Daughter	-	-	-	$\frac{6}{13}$

It is evident that the sum of the fractions will now be $\frac{13}{13}$ or 1; that is to say, it will exactly exhaust the whole.

The above rule is so extremely simple, that the reader will perhaps fail to perceive at the first glance that the property has been justly divided among the claimants in the exact ratio of their original shares. Such, however, is the case, for it is obvious that—

$$\frac{3}{13} : \frac{2}{13} : \frac{2}{13} : \frac{6}{13} = 3 : 2 : 2 : 6 = \frac{1}{13} : \frac{2}{13} : \frac{2}{13} : \frac{6}{13}$$

The Return is the apportionment of the surplus among the sharers, (except husband and wife,* who are not allowed to partake in it), when the shares do not exhaust the property and there are no residuaries.

The rule is, that the surplus is distributed among the sharers in the ratio of their respective shares. Here, as in the primary distribution, we shall solve the examples (Macn. Princ., 23—26) by the rules of modern arithmetic:—

EXAMPLE 1.—Two daughters.

It is obvious that as the two daughters divide, first,

* Although the husband and wife have not, technically speaking, any return, yet there are instances in which the whole residue would seem to revert to them: *supra*, p. 15.

their share of $\frac{1}{3}$, and then the return, equally, they divide the whole equally. We have:—

Each daughter's ultimate share* $\frac{1}{3}$

The ultimate share of each of two sisters, &c., would of course be arrived at in the same way.

EXAMPLE 2.†—Mother and 2 daughters.

Mother, $\frac{1}{6}$

Daughters, $\frac{2}{3}$ ∴ each daughter $\frac{1}{3}$

The whole must therefore be divided in the ratio $\frac{1}{6} : \frac{2}{3}$, or $1 : 4$. Consequently we have:—

Mother's ultimate share, $\frac{1}{6}$ of $1 = \frac{1}{6}$

Daughters' ultimate share, $\frac{4}{6}$ of $1 = \frac{4}{6}$ ‡

Each daughter, $\frac{2}{6}$

* We shall use the words ultimate share for the sake of brevity to express *share added to return*.

† This and some other examples are worked by the rule of "Proportionate Parts." See "Colenso's Arithmetic," or any other modern arithmetical treatise. It is unnecessary to begin by finding the total surplus, as will appear from the following reasoning:—

Let there be a number, $m + n$, and let $m = a + b$. Then, if we divide n (the total surplus) in the ratio $a : b$, we have:

$$\frac{a}{a+b} n, \text{ and } \frac{b}{a+b} n, \text{ and—}$$

$$a + \frac{a}{a+b} n = \frac{a(a+b) + a n}{a+b} = \frac{a}{a+b} (m+n)$$

$$\text{Similarly } b + \frac{b}{a+b} n = \frac{b}{a+b} (m+n)$$

Whence it appears that, if we divide the whole estate in the ratio $a : b$ (a and b being the original shares), the result is the same as if we divided the total surplus in that ratio, and added the parts to the respective shares.

‡ Mr. Macnaghten (p. 24) divides the surplus into 6, giving the mother 2 and the daughters 4. This is, of course, an error.

EXAMPLE 3.—Husband and 3 daughters.

Here it is obvious that as the husband has no return, the daughters, as sharers and by return, must take all the rest. Therefore the $\frac{1}{4}$ left after payment of his share will be divided among the daughters. Hence we have :—

Husband $\frac{1}{4}$

Each daughter's ultimate share $\frac{1}{12}$

EXAMPLE 4.—Husband and 6 daughters.

Here, as in Example 3, we must divide the remaining $\frac{1}{4}$ among the daughters, and we have :

Husband $\frac{1}{4}$

Each daughter's ultimate share, $\frac{1}{4} \div 6 = \frac{1}{24}$

Reducing $\frac{1}{4}$ and $\frac{1}{24}$ to the L. C. D., we get :

Husband $\frac{6}{24}$

Each daughter's ultimate share $\frac{1}{24}$

EXAMPLE 5.—Husband and 5 daughters.

Here we have :

Each daughter's ultimate share $\frac{1}{4} \div 5 = \frac{3}{20}$

Reducing $\frac{1}{4}$ and $\frac{3}{20}$ to the L. C. D., we have :

Husband $\frac{5}{20}$

Each daughter's ultimate share $\frac{3}{20}$

The result, as given above, is in accordance with the principles of the Sirajiyyah, "The return is the converse of the increase; and it takes place in what remains above the shares of those entitled to them, when there is no legal claimant of it; this surplus is then returned to the sharers *according to their rights*;" in other words (as shewn by the examples in the Sirajiyyah, and the universal practice), in the ratio of their original shares. If, in the present instance, we have recourse to the empirical rules of the Sir., we arrive at the same result; for we are told, when there are two-thirds and a sixth, to "settle the case" by five. (Sir. 22; 28.)

EXAMPLE 6.—Wife, 4 Tr. paternal grandmothers, 6 uterine sisters.

Wife $\frac{1}{4}$

Paternal grandmothers $\cancel{\frac{1}{3}} \frac{1}{6}$

Uterine sisters $\frac{1}{3}$

As the wife has no return, the paternal grandmothers and U. sisters will have all after payment of her $\frac{1}{4}$. Hence we have $1 - \frac{1}{4}$ or $\frac{3}{4}$ to be divided in the ratio* of $\frac{1}{6} : \frac{1}{3}$ or $1 : 2$.

Paternal grandmothers $\frac{1}{6}$ of $\frac{3}{4} = \frac{1}{8}$; each $\frac{1}{16}$

Uterine sisters $\frac{1}{3}$ of $\frac{3}{4} = \frac{1}{4}$; each $\frac{1}{8}$

Reducing $\frac{1}{8}, \frac{1}{16}, \frac{1}{8}$, to the L. C. D. we have:—

Wife $\frac{1}{4}$

Each grandmother $\frac{1}{8}$

Each uterine sister $\frac{1}{8}$

EXAMPLE 7.—Wife, 9 daughters, 6 Tr. paternal grandmothers.

Wife $\frac{1}{9}$

Daughters $\frac{2}{3}$

Paternal grandmothers $\frac{1}{6}$

* As in the example 2, so in this and any similar example, it is not necessary first to find the total surplus, for if we have a number $m + n + p$, and $n = a + b$, and we divide p (the total surplus) in the ratio $a : b$, we get:—

$$\begin{aligned}
 & \frac{a}{a+b} p \text{ and } \frac{b}{a+b} p; \text{ and} \\
 a + \frac{a}{a+b} p &= \frac{a(a+b) + ap}{a+b} \\
 &= \frac{a}{a+b} (n+p) \\
 &= \frac{a}{a+b} \{ (m+n+p) - m \} \\
 \text{Similarly } b + \frac{b}{a+b} p &= \frac{b}{a+b} \{ (m+n+p) - m \}
 \end{aligned}$$

Deducting the wife's share, as she has no return, we have $1 - \frac{1}{5}$, or $\frac{4}{5}$, to be divided in the ratio $\frac{3}{5} : \frac{1}{5}$, or $4 : 1$.

Daughters' ultimate share $\frac{4}{5}$ of $\frac{7}{8} = \frac{7}{10}$; each $\frac{7}{90}$

Paternal grandmothers' ultimate share $\frac{1}{5}$ of $\frac{7}{8} = \frac{7}{40}$; each $\frac{7}{240}$

Reducing $\frac{1}{5}$, $\frac{7}{90}$, $\frac{7}{240}$, to the L. C. D., we have:—

Wife $\frac{9}{20}$

Each daughter $\frac{5}{20}$

Each paternal grandmother $\frac{2}{20}$

In the simpler class of cases, where there is no person who is not entitled to partake of the return, the problems may be still more easily solved by merely diminishing the entire number of parts, or L. C. D., so as to make it equal to the aggregate number of parts required. Thus, from Example 2, p. 26, we have:—

Mother, $\frac{1}{6}$

Each daughter, $\frac{1}{3}$, or $\frac{2}{6}$

Therefore, in all,

$\frac{1}{6}$, $\frac{2}{6}$, $\frac{2}{6}$, or $\frac{5}{6}$

Diminishing the L. C. D. to 5, we have, $\frac{5}{6}$, and the division will be,

Mother $\frac{1}{6}$,

Each daughter, $\frac{2}{5}$ *

* This simple method may be proved in the same way as the "increase" (*supra*, p. 26). It occurred to the author, long after the issue of the first edition of this work, from pondering over the words, "The return is the converse of the increase" (Sir. 21; 27.)

CHAPTER VIII.

OF VESTED INHERITANCES.

WHEN a person dies leaving several heirs, the inheritance vests in them at once. Consequently, if one of the heirs die before the period of distribution, his share or portion must be divided among his own heirs, some of whom may be heirs of the first deceased and some not. It is usual to state the portions of those who ultimately succeed in fractions of the original estate. We shall shew how this may be done, by working out an example (Macn. Princ. 28) by means of ordinary arithmetic.

Wife: *by her*, 2 sons and 2 daughters; wife dies leaving a mother; then one daughter dies, leaving a husband.

Here we have first to consider what would be the portions if the wife and daughter had not died. Remembering that the wife is a sharer, and that the children are residuaries, we have:—

Wife $\frac{1}{8}$

Residue 1 — $\frac{1}{8} = \frac{7}{8}$, to be divided in the ratio 4 : 2, or 2 : 1.

Sons $\frac{2}{3}$ of $\frac{7}{8} = \frac{7}{12}$; each $\frac{7}{24}$

Daughters $\frac{1}{3}$ of $\frac{7}{8} = \frac{7}{24}$; each $\frac{7}{48}$

Now the wife dies, leaving her mother a sharer, and the four children residuaries.

Wife's mother $\frac{1}{6}$ of $\frac{1}{8} = \frac{1}{48}$

Residue $1 - \frac{1}{6} = \frac{5}{6}$, to be divided in the same ratio as the former residue, hence :—

Each son $\frac{1}{3}$ of $\frac{5}{6}$ of $\frac{1}{3} = \frac{5}{144}$

Each daughter $\frac{2}{3} \frac{5}{8} \frac{5}{8}$

Adding these to the original portions, we have :—

Each son $\frac{7}{24} + \frac{5}{144} = \frac{47}{144}$

Each daughter $\frac{47}{288}$

Lastly, one daughter dies, leaving her husband a sharer, and two sons (her brothers), and a daughter (her sister), residuaries.

Husband $\frac{1}{2}$ of $\frac{47}{288} = \frac{47}{576}$

Residue $1 - \frac{1}{3} = \frac{2}{3}$, to be divided in the ratio 4 : 1.

Each son $\frac{2}{5}$ of $\frac{1}{2}$ of $\frac{47}{288} = \frac{47}{1440}$

Daughter $\frac{47}{576}$

Adding these to the portions last found, we have :—

Each son $\frac{47}{144} + \frac{47}{1440} = \frac{517}{1440}$

Daughter $\frac{47}{576} + \frac{47}{1440} = \frac{517}{1440}$

Reducing $\frac{1}{48}$, $\frac{47}{576}$, $\frac{517}{1440}$, $\frac{517}{1440}$, to the L. C. D. we have :—

Wife's mother - - - $\frac{60}{2880}$

Daughter's husband - - - $\frac{235}{2880}$

Each son - - - $\frac{1034}{2880}$

Daughter - - - $\frac{517}{2880}$

CHAPTER IX.

OF EXCLUSION.

In order to prevent the property from being cut up into too many fractional parts, certain rules are laid down which are called rules of "exclusion." The parents, children, husband, and wife,* are not liable to exclusion.†

The general rule is, that the nearer excludes the more remote.‡ But the following table will present the best known instances:—

Son's son, excluded by - son.

Brother , - son, son's son h. l. s., father, or (perhaps) grandfather. *See Sir 1.*

Sister " - same.

C. brother " - same, or brother.

C. sister " - same, or two or more sisters, or brother.

* Sir. 18; 15.—It will be remembered that when there are sons the daughters are not sharers. This, however, is not a case of exclusion, as they become, *ipso facto*, residuaries.

† The exclusion of particular relatives is shewn to a great extent in the table of sharers (*supra*, Chap. 8); but we have thought it best to collect the principal instances in a separate chapter.

† "Whoever is related to the deceased through any person, shall not inherit while that person is living." (Sir. 13; 16.) "The nearest of blood must take." *Ibid.*

Son's daughter excluded by two daughters, or son.*	
U. brother ,,	- child, son's h. l. s. child, father, or Tr. grandfather.
U. sister ,,	- same.
Tr. grandfather ,,	- father.†
Tr. Pat. grandmother	- father, mother, intermediate Tr. grandfather, or nearer Tr. grandmother (even though in a different line).
Tr. Mat. grandmother	- mother, or nearer Tr. grandmother (even though in a different line).

The fact that a nearer grandmother in one line may exclude a more distant grandmother even in another line, leads to this curious result, that a grandmother who is herself excluded may exclude another.† Thus, a Tr. paternal grandmother, though herself excluded by the father, will exclude a Tr. maternal great grandmother.‡

* Sir. 5; 8.—“The son himself;” but no doubt this means *any* son, even if not the father of the particular son’s daughters.

† And, no doubt, nearer Tr. grandfather.

† Sir. 9; 12.

§ The author has thought it best to confine the word "exclusion" to its natural sense of *total* exclusion. In order, however, to save the reader from confusion, it may be well to remind him that in the Sir. the word is used in a wider sense. Thus, the husband, wife, mother, &c. are considered liable to *imperfect* exclusion (Sir. 13, 15), which occurs whenever, by the presence of certain other near relations, they are deprived of a larger share, and obliged to be contented with a smaller. The instances of this partial deprivation are enumerated in the Table of Sharers, *suprà*, p. 8.

CHAPTER X.

MISCELLANEOUS EXAMPLES.

WE subjoin a few miscellaneous examples taken almost at random from the large mass of precedents of inheritance in Macn. Princ.,* in order to shew the general applicability of the arithmetical methods which we have used above.

EXAMPLE 1.—Wife, mother, and sister.

Wife	-	-	-	-	$\frac{1}{4}$
Mother	-	-	-	-	$\frac{1}{3}$
Sister	-	-	-	-	$\frac{1}{2}$

But $\frac{1}{4} + \frac{1}{3} + \frac{1}{2} = \frac{3}{12} + \frac{4}{12} + \frac{6}{12} = \frac{13}{12}$, or more than the whole. The doctrine of the increase therefore applies, and the property must be divided into 13 instead of 12. Hence we have :—

Wife	-	-	-	-	$\frac{3}{13}$
Mother	-	-	-	-	$\frac{4}{13}$
Sister	-	-	-	-	$\frac{6}{13}$

EXAMPLE 2.—Three sons, two daughters, son's son, and wife.

The son's son has nothing, as there is no right of representation; wife $\frac{1}{8}$

Residue $1 - \frac{1}{8} = \frac{7}{8}$. This must be divided in

* Macn. Princ.—Precedents of Inheritance, Cases 69, 56, 57, 60, 62, 82, 75.

the proportion 6 : 2, or 3 : 1 (since the sons, as compared with the daughters, take double shares. Hence we have:—

Sons $\frac{1}{4}$ of $\frac{7}{8} = \frac{7}{32}$; each $\frac{7}{32}$

Daughters $\frac{1}{4}$ of $\frac{7}{8} = \frac{7}{32}$; each $\frac{7}{32}$

Reducing $\frac{1}{8}$, $\frac{7}{32}$, $\frac{7}{32}$, to the L. C. D., we have:—

Wife - - - - $\frac{8}{64}$

Each son - - - - $\frac{1}{64}$

Each daughter - - - - $\frac{7}{64}$

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EXAMPLE 3.—Wife, mother and two sons.

Wife - - - - $\frac{1}{8}$

Mother - - - - $\frac{1}{8}$

Residue 1 — $\frac{1}{8}$ — $\frac{1}{8} = 1 - \frac{7}{8} = \frac{1}{8}$

Each son - - - - $\frac{1}{48}$

Reducing $\frac{1}{8}$, $\frac{1}{8}$, $\frac{1}{48}$, to the L. C. D., we have:—

Wife - - - - $\frac{6}{48}$

Mother - - - - $\frac{8}{48}$

Each son - - - - $\frac{1}{48}$

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EXAMPLE 4.—Wife, four brothers' sons, one sister, and one uncle's son.

Wife - - - - $\frac{1}{4}$

Sister - - - - $\frac{1}{2}$

Uncle's son excluded by brothers' sons.

Residue 1 — $\frac{1}{4}$ — $\frac{1}{2} = 1 - \frac{3}{4} = \frac{1}{4}$, ∴ each brothers' son $\frac{1}{16}$

Reducing $\frac{1}{4}$, $\frac{1}{2}$, $\frac{1}{16}$, to the L. C. D., we have:—

Wife - - - - $\frac{4}{16}$

Sister - - - - $\frac{8}{16}$

Each brothers' son - - - - $\frac{1}{16}$

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EXAMPLE 5.—Three wives, six sons, six daughters.

Wives $\frac{1}{8}$, \therefore each $\frac{1}{24}$

Residue $1 - \frac{1}{8} = \frac{7}{8}$; to be divided in the ratio $12 : 6$, or $2 : 1$. Hence we have:—

Sons $\frac{2}{3}$ of $\frac{7}{8} = \frac{7}{12}$, \therefore each $\frac{7}{24}$

Daughters $\frac{1}{3}$ of $\frac{7}{8} = \frac{7}{24}$, each $\frac{7}{24}$

Reducing $\frac{1}{24}, \frac{7}{24}, \frac{7}{24}$, to the L. C. D., we have:—

Each wife	·	·	·	$\frac{6}{144}$
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Each son	·	·	·	$\frac{14}{144}$
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Each daughter	·	·	·	$\frac{7}{144}$
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EXAMPLE 6.—Wife; *by her*, three sons B. C. D., and two daughters E. F.; *by another wife*, a daughter G.; before distribution, the wife, B., C., and G. die successively. This is a case of vested “inheritance.”

Wife $\cdot \cdot \cdot \frac{1}{8}$

Residue $1 - \frac{1}{8} = \frac{7}{8}$, to be divided in the ratio $6 : 3$ or $2 : 1$.

Sons, $\frac{2}{3}$ of $\frac{7}{8} = \frac{7}{12}$; each $\frac{7}{36}$

Daughters, each $\frac{7}{24}$

Now the wife dies, and her share is divided among her own sons and daughters (G. is not her daughter and takes nothing from her) in the ratio $6 : 2$ or $3 : 1$. Hence we have:—

Sons $\frac{3}{4}$ of $\frac{1}{8} = \frac{3}{32}$; each $\frac{1}{32}$

E. and F., each $\frac{1}{64}$

Hence, adding these to the original shares:—

Sons, each $\frac{7}{36} + \frac{1}{32} = \frac{65}{288}$

E. and F., each $\frac{8}{288}$

G. (as before) $\frac{7}{24}$

Next the son B. dies; G., being a C. sister, is ex-

cluded by the actual brothers and sisters, and B.'s portion is divided between C. D. and E. F. in the ratio 4 : 2, or 2 : 1. Hence :—

$$\text{C. D. } \frac{1}{2} \text{ of } \frac{65}{288} = \frac{65}{432}; \text{ each } \frac{65}{864}$$

$$\text{E. F., each } \frac{65}{1728}$$

Adding these to the portions last found, we have :—

$$\text{C. D., each } \frac{65}{288} + \frac{65}{864} = \frac{260}{864} = \frac{65}{216}$$

$$\text{E. F., each } \frac{65}{432}$$

$$\text{G. (as before) } \frac{7}{2}$$

Afterwards C. dies, and his portion goes to D. and E. F. in the ratio 2 : 2 or 1 : 1. Hence :—

$$\text{D. } \frac{1}{2} \text{ of } \frac{65}{216} = \frac{65}{432}$$

$$\text{E. F., each } \frac{65}{864}$$

Adding as before :—

$$\text{D. } \frac{65}{216} + \frac{65}{432} = \frac{195}{432} = \frac{65}{144}$$

$$\text{E. F., each } \frac{65}{288}$$

$$\text{G. (as before) } \frac{7}{2}$$

Lastly, G. dies, and as she has no full brothers or sisters of the whole blood, her portion is divided between D. and E. F. The ratio is again 2 : 2 or 1 : 1, and we get :—

$$\text{D. } \frac{1}{2} \text{ of } \frac{7}{2} = \frac{7}{144}$$

$$\text{E. F., each } \frac{7}{288}$$

Adding, as before :—

$$\text{D. } \frac{65}{144} + \frac{7}{144} = \frac{72}{144} = \frac{1}{2}$$

$$\text{E. F.,* each } = \frac{7}{288} = \frac{1}{4}$$

* In order to economize space, we have omitted, throughout this example, the actual calculation of the daughters' portions ; but the reader can easily work them out, and will find that at each stage they come out as we have given them, *i.e.* each daughter's portion exactly half of each son's portion. In this case the ultimate result might have been easily foreseen, but we have thought

Reducing $\frac{1}{2}$, $\frac{1}{4}$, to the L. C. D., we have D. $\frac{2}{4}$, E. F. each $\frac{1}{4}$. The fractions thus obtained are identical with those given in Macn. Princ.; where, however, they are expressed in the more bulky form of $\frac{864}{1728}$,

$\frac{432}{1728}$

75- EXAMPLE 7.—Mother, wife, and daughters of U. brother.

Mother	·	·	·	$\frac{1}{3}$
Wife	·	·	·	$\frac{1}{4}$

The U. brothers' children are distant kindred, and consequently, as there are sharers, they take nothing. But $\frac{1}{3}$ and $\frac{1}{4}$ do not exhaust the whole; therefore, this is a case of return; and, as a wife cannot partake in the return, the mother will get, after payment of the wife's share, all. Hence we have, finally:—

Mother	·	·	·	$\frac{3}{4}$
Wife	·	·	·	$\frac{1}{4}^*$

it desirable to work it out, as this is one of the most elaborate cases of vested inheritance given in Macn. Princ.

* As mentioned above (p. 3), the various problems of inheritance may now be seen fully worked out by the ancient Arabian methods, in "Al Sirajiyah reprinted, with Notes and Appendix by Almaric Rumsey" (Amer, Lincoln's Inn Gate), a work published since the issue of the first edition of this Treatise.

CHAPTER XI.

EXAMPLES FOR PRACTICE.

WE have thought it desirable to add to the Second Edition of this work a few Examples *not worked out*, in order to stimulate the industry and exercise the ingenuity of the student. These "Examples for Practice" are all taken from reported cases, with the exception of one or two which have been selected from the Sirajiyah. The reader must expect to meet with "return," "increase," "exclusion," or "vested inheritance," in almost every case; for it is rare in actual practice to find the simple instances which theoretical instruction provides as a kind of tender fare for the young beginner. With this warning, we commend the "Examples for Practice" to our readers, who, with a thorough knowledge of the preceding part of the book, and a resolute determination not to be beaten, will be sure to be able to give a good account of them.

EXAMPLE 1.—Husband, father, mother.

Answer.—Husband, $\frac{1}{2}$; father, $\frac{1}{3}$; mother, $\frac{1}{6}$;
(or, $\frac{3}{6}$; $\frac{2}{6}$; $\frac{1}{6}$).

EXAMPLE 2.—Son, daughter. The daughter dies, and leaves a son, Fuseehoodeen. Fuseehoodeen dies, and leaves a son, Ali, and a daughter, Wajida. Ali dies. What portion of the original estate does Wajida take ?

Answer.— $\frac{1}{3}$.

EXAMPLE 3.—Wife, brother, mother. Mother dies.

Answer.—Wife, $\frac{1}{4}$; brother, $\frac{3}{4}$;
(or, $\frac{3}{12}$; $\frac{9}{12}$).

EXAMPLE 4.—Wife, son, wife's mother, son of half-brother.* Son dies.

Answer.—Wife, $\frac{5}{12}$; son of half-brother, $\frac{7}{12}$;
(or, $\frac{10}{24}$; $\frac{14}{24}$).

EXAMPLE 5.—Two sons, Husun Ali and Himmut Ali, mother, wife Zeinub, the mother of Himmut Ali. Another wife, Zeb-oon-nissa, mother of Husun Ali, and after her, Aloo Thakoor, another son of *propositus* by her, have died before *propositus*. Zeb-oon-nissa's dower† absorbed the whole estate.

* This is, of course, a half-brother by the father's side, or C. brother. The reader will remember that the U. brother's son cannot be a residuary.

† The dower of a wife may be fixed at any amount, however large; and if it should be so large as to absorb the whole estate, it excludes the inheritors, as it is held to be a debt. It descends in the same way as other property; and, consequently, the husband, the very person from whom it is derived, will take his share as an heir if his wife dies before him. The present example affords an instance of that contingency.

Answer.—*First* : On Zeb-oon-nissa's death, *propositus* (her husband), $\frac{1}{2}$; sons Husun Ali and Aloo Thakoor, each $\frac{1}{8}$ (or, $\frac{2}{8}$, $\frac{3}{8}$). *Secondly* : On Aloo Thakoor's death, *propositus* takes his $\frac{1}{8}$, and therefore has $\frac{1}{8}$. *Thirdly* : On the death of *propositus*, the $\frac{1}{8}$ which have come to him will be distributed thus:—mother, $\frac{1}{8}$; wife Zeinub, $\frac{1}{8}$; sons Husun Ali and Himmuth Ali, each $\frac{1}{16}$ (or $\frac{2}{16}$, $\frac{3}{16}$, $\frac{4}{16}$).

EXAMPLE 6.—Husband, daughter, brother, three sisters.

Answer.—Husband, $\frac{1}{4}$; daughter, $\frac{1}{2}$; brother, $\frac{1}{10}$; sisters, each $\frac{1}{20}$ (or $\frac{5}{20}$, $\frac{10}{20}$, $\frac{3}{20}$, $\frac{1}{20}$).

EXAMPLE 7.—Wife, mother, son, brother. Son dies, then mother dies.

Answer.—Wife, $\frac{1}{8}$; brother, $\frac{2}{8}$ (or $\frac{2}{7}$, $\frac{4}{7}$).

EXAMPLE 8.—Son, two daughters, Misree Khanum and Janee Khanum, both married to Moohummud Tukee. Son dies. Misree Khanum dies, leaving two sons, Ali Nukee and Husun Uskuree. Janee Khanum dies. Lastly, Husun Uskuree dies.

Answer.—Moohummud Tukee, $\frac{1}{6}$; Ali Nukee, $\frac{5}{6}$.*

* This example presents the singular feature of two sisters married to the same man. One sister dies, leaving two sons; the other dies after her, childless. The second sister's property, after the husband has taken half (the lady herself being childless), goes equally between the two sons, as her sister's children. As her step-children they could, of course, take nothing from her, being, in that character, neither sharers, residuaries, nor distant kindred.

EXAMPLE 9.—Two wives, daughter. One wife, leaving *her* daughter's son, who is *not* descended from the *propositus*, dies. The other wife, the mother of the above mentioned daughter of *propositus*, dies.

Answer.—Wife's daughter's son, $\frac{1}{16}$, daughter, $\frac{1}{16}$.

EXAMPLE 10.—Two wives, mother, son. Mother dies. One wife, the mother of the son, dies.

Answer.—Surviving wife, $\frac{1}{16}$; son, $\frac{1}{16}$ (or $\frac{3}{48}$, $\frac{45}{48}$).

EXAMPLE 11.—Wife,* two daughters, son (missing).

Answer.—Wife, $\frac{1}{8}$; daughters, each, $\frac{7}{16}$; but the missing son's part, $\frac{7}{16}$, to be restored to him if he returns, each daughter giving up $\frac{7}{32}$ (or $\frac{4}{32}$, $\frac{1}{32}$, $\frac{1}{32}$).

EXAMPLE 12.—Wife,† two sons, four daughters. One of the sons dies, leaving three sons, *i. e.*, son's sons of the *propositus*.

Wife, $\frac{1}{8}$; son, $\frac{7}{32}$; each daughter, $\frac{7}{64}$; each son's son, $\frac{7}{64}$;
 (or, $\frac{24}{96}$; $\frac{42}{96}$; $\frac{21}{96}$; $\frac{14}{96}$).

EXAMPLE 13.—Mother, wife Zuhooroonissa and two other wives, daughter Fyzoonissa (being the daughter of Zuhooroonissa) and two other daughters, brother. Daughter Fyzoonissa dies.

Answer.—Mother, $\frac{1}{8}$; wife Zuhooroonissa, $\frac{17}{64}$;

* It must be presumed that she is not mother of the son, for if so, she would share his $\frac{7}{16}$ with the daughters.

† It must be assumed that she is not mother of the son who dies, for, if she were, she would partake of his estate.

other wives, each, $\frac{1}{24}$; surviving daughters, each, $\frac{8}{27}$; brother, $\frac{17}{216}$;
 (or, $\frac{3}{216}$; $\frac{17}{216}$; $\frac{8}{216}$; $\frac{64}{216}$; $\frac{17}{216}$).

EXAMPLE 14.—Wife (being father's brother's daughter, or first cousin, of her husband), son, daughter, brother. Son dies; daughter dies, leaving husband, son, and daughter; wife dies, leaving father's brother's son (the brother above mentioned of the propositus); daughter's son dies; brother dies, leaving son; daughter's husband dies, leaving daughter, (the daughter's daughter above mentioned).

Answer.—Daughter's daughter, $\frac{45}{72}$; brother's son, $\frac{17}{72}$;
 (or, $\frac{210}{432}$; $\frac{222}{432}$).

EXAMPLE 15.—Wife, son Enayut Hosein by the surviving wife, son by a previously deceased wife, daughter by the surviving wife. Daughter dies, leaving a son and two daughters; wife dies.

Answer.—Son Enayut Hosein, $\frac{121}{240}$; other son, $\frac{7}{20}$; daughter's son, $\frac{7}{96}$; daughter's daughters, each, $\frac{7}{192}$;
 (or, $\frac{484}{960}$; $\frac{336}{960}$; $\frac{70}{960}$; $\frac{35}{960}$).

EXAMPLE 16.—Four wives, nine daughters, six true grandmothers.

Answer.—Wives (each), $\frac{1}{32}$; daughters (each), $\frac{7}{96}$;
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 (or, $\frac{45}{1440}$; $\frac{112}{1440}$; $\frac{42}{1440}$).

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